

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SPV OSUS LTD.,

Plaintiff,

-against-

HSBC HOLDINGS PLC, HSBC BANK PLC, HSBC  
BANK USA, NA, HSBC USA INC., HSBC  
SECURITIES SERVICES (BERMUDA) LIMITED,  
HSBC INSTITUTIONAL TRUST SERVICES  
(BERMUDA) LIMITED, HSBC BANK BERMUDA  
LIMITED, HSBC SECURITIES SERVICES  
(LUXEMBOURG) S.A., HSBC BANK (CAYMAN)  
LIMITED, HSBC PRIVATE BANKING HOLDINGS  
(SUISSE) S.A., HSBC PRIVATE BANK (SUISSE)  
S.A., HSBC FUND SERVICES (LUXEMBOURG)  
S.A., SONIA KOHN, MARIO BENBASSAT,  
ALBERTO BENBASSAT, STEPHANIE  
BENBASSAT, 20:20 MEDICI AG, UNICREDIT  
BANK AUSTRIA AG, BA WORLDWIDE FUND  
MANAGEMENT LTD., UNICREDIT S.P.A.,  
HERALD ASSET MANAGEMENT LIMITED,  
EUROVALEUR, INC., PIONEER ALTERNATIVE  
INVESTMENT MANAGEMENT LIMITED, ALPHA  
PRIME ASSET MANAGEMENT LTD., REGULUS  
ASSET MANAGEMENT LIMITED, CARRUBA  
ASSET MANAGEMENT LIMITED, TEREIO TRUST  
COMPANY LIMITED, GENEVALOR, BENBASSAT  
ET CIE, HERMES ASSET MANAGEMENT  
LIMITED, THEMA ASSET MANAGEMENT  
(BERMUDA) LTD., THEMA ASSET  
MANAGEMENT LIMITED, EQUUS ASSET  
MANAGEMENT LIMITED, EQUUS ASSET  
MANAGEMENT PARTNERS, L.P., AURELIA FUND  
MANAGEMENT LIMITED, INTER ASSET  
MANAGEMENT INC., T+M TRUSTEESHIP &  
MANAGEMENT SERVICES S.A., GTM  
MANAGEMENT SERVICES CORP. N.V., AURELIA  
ASSET MANAGEMENT PARTNERS, CAPE  
INVESTMENT ADVISORS LIMITED and ERWIN  
KOHN,

Defendants.

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No. 1:18-cv-03497-AJN

**PLAINTIFF SPV OSUS  
LTD.'S RESPONSE TO  
SUPPLEMENTAL  
MEMORANDUM OF LAW  
OF DEFENDANT T+M  
TRUSTEESHIP &  
MANAGEMENT SERVICES  
S.A.**

**PLAINTIFF SPV OSUS LTD.'S RESPONSE TO  
SUPPLEMENTAL MEMORANDUM OF LAW OF DEFENDANT  
T+M TRUSTEESHIP & MANAGEMENT SERVICES S.A.**

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Plaintiff SPV OSUS LTD., by its undersigned attorneys, submits this response to the supplemental memorandum of law filed by defendant T+M Trusteeship & Management Services S.A. (“T+M”).

### **PRELIMINARY STATEMENT**

The supplemental memorandum of law brought by T+M fails to provide any additional grounds for dismissal of SPV’s claims.

### **ARGUMENT**

Specific personal jurisdiction over T+M Trusteeship & Management Services S.A. (“T+M”) is proper in New York due to its significant contacts with BLMIS. Those contacts are alleged in the Alleged Complaint, both in connection with the status of T+M as a Beneficial Owner Defendant and in particular in connection with its ownership interest in Thema Asset Management Limited (“Thema Management BVI”). Dkt. #67 ¶¶70, 76. The legal standard for a showing of specific personal jurisdiction is discussed in SPV’s Memorandum of Law in Opposition to Defendants’ Motion to Dismiss responding to the Consolidated Brief (“Main Response”), which is incorporated in its entirety herein by reference.

#### **A. Beneficial Owner Defendant**

T+M is a “Beneficial Owner Defendant,” as that term is defined in the Amended Complaint. *Id.* ¶80. In that capacity, the acts alleged against the Beneficial Owner Defendants are alleged as to T+M.

As a Beneficial Owner Defendant, T+M derived significant revenue from New York for its role in the BLMIS fraud. *Id.* ¶133. It derived that revenue by, among other means, providing assistance in directing funds into BLMIS’s account at JPMorgan Chase in New York, for the purpose of investing with BLMIS in New York. *Id.* ¶135. In that regard, it knew that the more money the feeder funds took in, the more it received in fees. That gave the Beneficial Owner

Defendants, including T+M, a powerful incentive not to delve into the serious indicia of fraud surrounding BLMIS, such as the implausibly low fees BLMIS charged the feeder funds in New York. *Id.* ¶251. In sum, motivated by the desire to make fees, T+M and the other Beneficial Owner Defendants funneled billions of dollars into BLMIS. *Id.* ¶¶416, 424. T+M thereby committed various tortious acts, both inside and outside New York, all of which caused serious injury in New York. *Id.* ¶133.

### **B. Ownership Interest in Thema Management BVI**

As a result of the significant commercial activities conducted by Thema Management BVI in New York, personal jurisdiction is proper over T+M, who was the beneficiary of Thema Management BVI's contacts with New York. *Id.* ¶76. These New York-based commercial activities—and the resulting benefit to T+M—is described in the Amended Complaint.

First, in addition to the ownership interest of T+M, Thema Management BVI was owned and controlled by the Benbassat family whose members regularly visited Madoff in New York. *Id.* ¶¶70, 76, 116-18. As a result, T+M was aware, through Thema Management BVI and the Benbassats, about key aspects of the fraud Madoff was perpetrating, including for example, that Madoff was the one making investment decisions, while acting as both investment advisor and custodian. *Id.* ¶153.

Second, as a result of BLMIS transactions that were transacted in New York, which were then processed through New York banks, Thema Management BVI and T+M as its owner received fees and/or distributions, representing proceeds of the New York fraud. *Id.* ¶¶70, 76, 250, 351-52.

Third, as a result of trading engaged in by BLMIS in New York on behalf of Thema Management BVI, Thema Management BVI and T+M as its owner became aware or consciously avoided confirming serious indicia of fraud in account records for which they were responsible. *See, e.g., id.* ¶¶195, 200, 212, 220, 233, 238, 259. Among other indicia of fraud, these records

showed trades outside the daily pricing range (*id.* ¶198); negative cash balances on behalf of customers which amounted to interest-free loans (*id.* ¶231); sales of stocks not accompanied by any hedging adjustment (*id.* ¶238); and option transactions which did not settle on the business day following the transaction, per industry custom. (*id.* ¶259).

### **CONCLUSION**

For these reasons and those discussed more fully in SPV's Main Response to Defendants' Motion to Dismiss, which is incorporated in its entirety herein by reference, T+M is subject to personal jurisdiction in this forum, and Defendants' motion to dismiss should be denied.

Dated: November 20, 2018.

Respectfully submitted,

/s/ Collin J. Cox

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**CERTIFICATE OF SERVICE**

I certify that this pleading was filed electronically with the Court, and thus served simultaneously upon all counsel of record, this 20th day of November, 2018.

/s/ Collin J. Cox